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EXAMINER

BASHAW, HEIDI M

ART UNIT

PAPER NUMBER

3732

MAIL DATE

DELIVERY MODE

09/09/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



### DETAILED ACTION

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 120-132 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chishti et al. (5,975,893) in view of Lehmann et al. (6,575,751). Chishti et al. discloses a method of providing a custom orthodontic appliance for repositioning teeth of a patient comprising providing for display on a computer screen, with interaction by an operator (user), data of images of the teeth of the patient in suggested post-treatment tooth positions and orientations (final digital data set) based on three-dimensional information of the shapes of the teeth (column 5 line 37), receiving feedback information from a person (treating professional), other than the operator, and providing a custom orthodontic appliance configured to reposition teeth based on the suggested post-treatment tooth positions and orientations. It is noted that the interactive step is written in the past tense, and interactivity can be interpreted as with the computer system. Furthermore, there is suggestion as to various times when "users" can provide feedback as in information to modify (change) or accept (not change) tooth positions and orientations in obtaining post-treatment tooth positions and orientations (columns 4-7, 9-14). However, Lehmann et al. is used to teach a situation in which the person, treating professional, or orthodontic practitioner (dentist) does not have access to the computerized site and uses the services of another such as that of the operator, user, or

Art Unit: 3732

laboratory, and interactivity is present in the method of providing a custom dental appliance. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the person who has interactively viewed a display of the images as understood as in Lehmann et al. in order to enable the person to save time and effort in communicating with the laboratory operator in view of Lehmann et al. As changes are incorporated, it is redisplayed.

### ***Response to Arguments***

3. The declaration filed on September 19, 2007 under 37 CFR 1.131 has been considered but is ineffective to overcome the Lehman reference. The Lehman reference is used to meet the claimed limitations including an orthodontic practitioner having access to a computerized site and using the services of another such as that of the operator, user or laboratory and interactivity present in the method of providing a custom dental appliance. It is not clear from the declaration that the individual witnessed that act of an operator providing a suggested post treatment tooth position and then another person interactively viewing the display and providing feedback. Furthermore, since the declarant is not an inventor and several years have passed since Mr. Jordan's personal recollection and what he witnessed that day, the specifics of what he saw the day are questioned.

### ***Conclusion***

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HEIDI M. BASHAW whose telephone number is (571)270-3081. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on 571-272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3732

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**Heidi Bashaw**  
**Examiner**  
**Art Unit 3732**

**/John J Wilson/**  
**Primary Examiner**  
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8/3/2008